

Letter of Findings Number: 04-20120388
Sales and Use Tax
For the Years 2009-2011

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ISSUES

I. Sales Tax–Trade-In Allowance.

Authority: IC § 6-2.5-1-5; IC § 6-2.5-1-6; IC § 6-8.1-5-1.

Taxpayer protests the Department's assessment of sales tax without allowance for traded-in vehicles.

II. Sales Tax–Double-Counted Sales.

Authority: IC § 6-8.1-5-1.

Taxpayer protests the Department's assessment of sales tax on vehicles that it argues were counted two times.

III. Sales Tax–Inclusion of Sales Tax.

Authority: IC § 6-8.1-5-1.

Taxpayer protests the Department's assessment of sales tax on amounts that it states included sales tax.

IV. Sales Tax–Exempt Sales.

Authority: IC § 6-2.5-5-8; IC § 6-2.5-8-8.

Taxpayer protests the Department's assessment of sales tax on vehicles that it claims were sold in tax-exempt transactions.

V. Sales Tax–Bad Debt Deduction.

Authority: IC § 6-2.5-6-9.

Taxpayer protests the Department's assessment of sales tax on disallowed bad debt deductions.

VI. Tax Administration–Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is a corporation that sells used vehicles. The Indiana Department of Revenue ("Department") audited Taxpayer and determined that Taxpayer had not remitted sales tax based on its vehicle sales and had not paid sales or use tax on various items. The Department issued a proposed assessment of tax, interest, and a ten-percent negligence penalty. Taxpayer protested the assessment, the Department conducted an administrative hearing, and this Letter of Findings results.

I. Sales Tax–Trade-In Allowance.

DISCUSSION

Taxpayer protests the assessment of sales tax on various transactions for which it claims customers offered vehicles for trade-in. The issue is whether Taxpayer received vehicles as part of like-kind exchanges and, if so, the value of the like-kind vehicles.

In general, IC § 6-2.5-1-5(a) provides that gross retail income "means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property is sold, leased, or rented, valued in money, whether received in money or otherwise." However, IC § 6-2.5-1-5 does not include "the value of any tangible personal property received in a like-kind exchange in the retail transaction, if the value of the property given in exchange is separately stated on the invoice, bill of sale, or similar document given to the purchaser."

IC § 6-2.5-1-6 provides:

(a) "Like kind exchange" means the reciprocal exchange of personal property between two (2) persons, when:

(1) the property exchanged is of the same kind or character, regardless of grade or quality; and

(2) the persons exchanging the property both own the property prior to the exchange.

(b) A "like kind exchange" may be a part of a transaction involving additional consideration other than the exchanged property.

(c) Notwithstanding subsection (a), a "like kind exchange" does not occur when:

(1) the transaction involves more than two (2) persons; or

(2) one (1) party to the transaction, through agreement or negotiation with the second party, acquires personal property for the primary purpose of exchanging that property for like kind property held by the second party.

IC § 6-8.1-5-1(c) provides in relevant part that "The notice of proposed assessment is prima facie evidence

that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

Taxpayer has provided a breakdown of vehicles claimed to have been acquired pursuant to a like-kind exchange. Taxpayer's breakdown does not establish that the property acquired in a like-kind exchange or the value of the property. Nevertheless, Taxpayer has provided sufficient information to justify further review and—if appropriate—adjustment by the Department's Audit Division. Taxpayer is sustained subject to audit review; however, Taxpayer must provide any invoices and other documentation substantiating the claimed like-kind exchanges within thirty (30) days after issuance of this Letter of Findings.

FINDING

Taxpayer's protest is sustained subject to audit verification.

II. Sales Tax—Double-Counted Sales.

DISCUSSION

Taxpayer protests the assessment of sales tax on various sales for which it claims it erroneously counted twice. According to Taxpayer, a sale of a repossessed vehicle was effectively counted twice.

IC § 6-8.1-5-1(c) provides in relevant part that, "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

Taxpayer's provided information includes a breakdown of the vehicles that were subject to "Buy Backs." Taxpayer's information does not establish that the vehicles were counted twice when they should have only been counted once. Nevertheless, Taxpayer has provided sufficient information to justify further review and—if appropriate—adjustment by the Department's Audit Division. Taxpayer is sustained subject to audit review; however, Taxpayer must provide any invoices and other documentation substantiating the claimed double-counted vehicles within thirty (30) days of notification by the Department's Audit Division.

FINDING

Taxpayer's protest is sustained subject to audit verification.

III. Sales Tax—Inclusion of Sales Tax.

DISCUSSION

Taxpayer protests the amount of sales tax assessed. In particular, Taxpayer protests that the amount of sales listed included sales tax. In other words, assuming a vehicle was sold for \$100 with \$7 sales tax, Taxpayer asserts that the Department's audit determined that the taxable sale was \$107 as opposed to \$100.

IC § 6-8.1-5-1(c) provides in relevant part that "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

Upon review of Taxpayer's documentation for 2010 and 2011, the Department used only the gross sales price in determining total sales. The gross sales price was listed on a different line than the Indiana sales tax on the transaction, and the two were not aggregated in determining the listed sales subject to sales tax. Thus, Taxpayer has not provided sufficient information to conclude that its contention was correct.

FINDING

Taxpayer's protest is respectfully denied.

IV. Sales Tax—Exempt Sales.

DISCUSSION

Taxpayer protests the taxation of various sales. In particular, Taxpayer claims that it sold vehicles to third parties who were eligible for the sale-for-resale exemption found under IC § 6-2.5-5-8. The issue is whether Taxpayer has substantiated its claim for exemption.

Under IC § 6-2.5-8-8(a), "A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase." Absent a proper exemption certificate, Taxpayer is required to demonstrate the purchaser's exempt use of the items purchased.

In this particular case, Taxpayer provided exemption certificates. However, Taxpayer listed itself as the "purchaser" and the actual purchaser as the "seller." Thus, the exemption certificates were not properly completed by the actual purchaser. Taxpayer's protest is denied with regard to these sales.

FINDING

Taxpayer's protest is respectfully denied.

V. Sales Tax—Bad Debt Deduction.

DISCUSSION

Taxpayer protests the disallowance of claimed bad debt deductions. In particular, the Department's audit stated that Taxpayer's claimed deduction was improperly deducted on its monthly sales tax return. Instead, the Department asserted that the claimed deduction should have been taken via refund claims.

IC § 6-2.5-6-9(a) provides that a bad debt is to be "deduct[ed] from the retail merchant's gross retail income from retail transactions made during a particular reporting period." The provision necessarily requires that the refund be allowed on the sales tax return covering the period for which the bad debt is determined to be worthless (or partially worthless). Thus, Taxpayer's bad debt deductions are not necessarily disallowable because the

deductions were claimed on Taxpayer's sales tax returns. However, the exact amount of deduction is still subject to audit review. Further, if Taxpayer has subsequently filed refund claims for the periods in question, Taxpayer's protest is denied to the extent any refunds have been permitted.

FINDING

Taxpayer's protest is sustained subject to audit review.

VI. Tax Administration—Penalty.

DISCUSSION

Taxpayer argues that it is entitled to abatement of the penalty for incurring a deficiency as the result of negligence.

IC § 6-8.1-10-2.1 states in relevant part:

(a) If a person:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department; the person is subject to a penalty.

(b) Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10 [percent]) of:

- (1) the full amount of the tax due if the person failed to file the return;
- (2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;
- (3) the amount of the tax held in trust that is not timely remitted;
- (4) the amount of deficiency as finally determined by the department; or
- (5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.

Departmental regulation [45 IAC 15-11-2](#)(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC § 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation [45 IAC 15-11-2](#)(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed"

Taxpayer argues that the largest portion of the deficiency was the result of the bad debt reporting issue discussed previously. However, Taxpayer was sustained on that issue. With regard to the remaining issues in the assessment, Taxpayer did not detect otherwise apparent discrepancies between its actual and reported sales and further did not collect exemption certificates despite clear statutory requirements. Thus, Taxpayer has not provided sufficient legal or factual grounds to justify penalty waiver.

FINDING

Taxpayer's protest is denied.

CONCLUSION

Taxpayer's protest is sustained subject to audit verification on Issues I, II, and V. Taxpayer's protest is denied on Issues III, IV, and VI.

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